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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In re Application of ) MM Docket No. 93-176  
RICHARD RICHARDS ) File No. BRTTL-921116IG  
For Renewal of License of )  
Low Power Television )  
Station K33CG )  
Sierra Vista, Arizona )  
  
To: Administrative Law Judge  
Richard L. Sippel

**MASS MEDIA BUREAU'S PROPOSED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW**

Respectfully submitted,  
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April 26, 1994

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**MASS MEDIA BUREAU'S PROPOSED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW**

**Preliminary Statement**

1. By Hearing Designation Order, 8 FCC Rcd 4339 (1993), the Commission designated the above captioned application of Richard Richards for renewal of license of low power television station K33CG, Sierra Vista, Arizona, for hearing on the following issues:

(a) To determine in light of Richard Richards' conviction for violating Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(D) and 841(b)(5), whether Richards possesses the requisite qualifications to be the licensee of station K33CG.

(b) To determine, in light of the evidence adduced pursuant to the foregoing issue, whether the grant of the application to renew the license of station K33CG will serve the public interest, convenience and necessity.

The HDO also specified that both the burden of proceeding with the introduction of evidence and the burden of proof with respect to issues (a) and (b) are on Richards. Each of the above specified issues arose in connection with Richards' guilty plea in the United States District Court for the District of Arizona to the felonies of possession with intent to distribute marijuana and marijuana cultivating on federal property.

2. Hearing sessions were held on December 7, 1993, and February 23, 1994. The record in this proceeding was closed by Order, FCC 94M-173, released March 17, 1994.

### **Proposed Findings of Fact**

3. From 1985 to 1992, Richard Richards was the owner of an 82.5 acre parcel of land, known as the Montezuma Ranch, located in Arizona, approximately three-quarters of a mile from the Mexican border. While he owned this land, Richards resided in a house located on the property. Richards also farmed the property, growing a wide variety of crops including apples, peaches, pears and garlic. (Tr. 43-45). The Montezuma Ranch is surrounded by federal parkland on three sides. On the fourth side the land is owned by the State. (Tr. 50).

4. On July 25, 1991, Richards was arrested and charged with domestic violence (Tr. 45). Following Richards' arrest, the police, pursuant to a search warrant, searched Richards' house and property. (Id.). At the time of the search, Richards had in his home approximately 18 scales, including a triple beam scale which was capable of measuring weights as low as one gram. (Tr. 46). He also had two pagers and two mobile telephones. (Tr. 47-48). A search of his home revealed marijuana debris (mostly leaves that had come loose when marijuana plants were hung upside down to dry) in a partially hidden room. (Tr. 51-53).

5. At the time of his arrest, growing on ranch property were two marijuana plants and growing on federal park land adjacent to the ranch were 34-37 marijuana plants. (Tr. 49). Richards was responsible for the cultivation of the marijuana

plants growing on the federal park land. (Tr. 49).

6. On February 19, 1992, Richards was indicted on a number of charges including violation of Title 21, United States Code, Section 841(a)(1), possession with intent to distribute a number of marijuana plants. (MMB Ex. 2, p. 1). Subsequently, on May 4, 1992, Richards entered into a "Plea Agreement" whereby Richards agreed, inter alia, that the following accurately describes his involvement in the case and that the government could prove beyond a reasonable doubt, if this matter were to proceed to trial:

That on or about July 25, 1991, defendant Richard Richards was in knowing possession of between 37 and 41 marijuana plants, some plants being grown on his property and some plants being grown on National Park Service property. Richards was the owner of these plants, he knew them to be marijuana plants and he intended to distribute the plants or the processed marijuana derived from these plants to another person or persons.

(MMB Ex. 2, pp. 5 and 6).

7. On July 31, 1992, a "Judgement" was entered in the criminal case against Richards. That "Judgement" specified that Richards had been convicted of:

violating Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(d) and 841(b)(5), possess (sic) with intent to distribute less than 50 kgs (Marijuana I) and cultivating marijuana on federal property, as charged in Count 1 of the Indictment.

The "Judgement" also specified that Richards be placed on probation for a period of five years and that he serve seven

months under house arrest. Richards was also required to participate in a substance abuse program and submit to substance abuse testing. (MMB Ex. 3).

**Proposed Conclusions of law**

1. In the 1986 Character Policy Statement, 102 FCC 2d 1179, 1195-97, 1200-03, the Commission stated that it would not consider allegations of violations of law that had not been adjudicated by the agency with primary jurisdiction and that did not involve the applicant's proclivity to deal truthfully with the Commission. It stated, however, that it would consider nonbroadcast misconduct as prima facie evidence of an applicant's lack of honesty if the misconduct was "so egregious as to shock the conscience and evoke almost universal disapprobation." 102 FCC 2d at 1205 n. 60.

2. By Public Notice, 4 FCC Rcd 7533 (1989), the Commission put its licensees on clear and unequivocal notice that it would regard drug trafficking as a matter of the gravest concern and that, absent extenuating circumstances, it would take "all appropriate steps, including initiation of license revocation proceedings where information comes to our attention that FCC licensees or their principals have been convicted of drug trafficking."

3. In 1990, the Commission modified its 1986 Character Policy Statement to make clear that it considers evidence of any conviction of a felony relevant to its evaluation of an applicant's character, regardless of whether the conviction involved the applicant's honesty. Policy Statement and Order, 5 FCC Rcd 3252 (1990), recon. granted, 7 FCC Rcd 6564 (1992).

4. In 1990, the Commission issued an Order to Show Cause why the broadcast license of a convicted drug dealer should not be revoked. Williamsburg County Broadcasting Corp., 5 FCC Rcd 3034 (1990). The licensee in that case had been convicted of possession of cocaine with intent to distribute and conspiring to commit that offense. The Commission held that:


Felonious drug trafficking, which involves systematic devotion to a criminal enterprise, has produced according to the President of the United States, "the gravest domestic threat facing our nation today." ... A doubt certainly exists as to whether someone recently found guilty of such an egregious crime against society would faithfully serve the public in exercise of the vast and important discretion that this agency entrusts to licensed broadcasters.

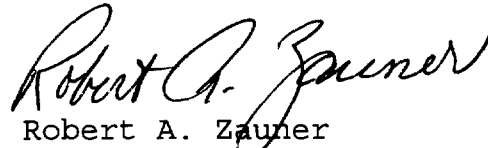
5 FCC Rcd 3035. Subsequently, on appeal, the Commission affirmed the Initial Decision, 6 FCC Rcd 340 (1991), and concluded that "in light of [the licensee's] criminal activities it would disserve the public interest to permit him to keep his license." South Carolina Radio Fellowship, 6 FCC Rcd 4823 (1991). In so holding, the Commission stated that "the drug conviction is itself sufficient basis for revocation...." 6 FCC Rcd at 4824.

5. In the instant case, Richard Richards, like the licensee in the Williamsburg case, was found guilty of violating the provision of the federal criminal code which prohibits the possession of a controlled substance with the intent to distribute it. Like the licensee in Williamsburg, Richard Richards was placed under arrest and served a period of incarceration (Richards' incarceration was in the form of house arrest). Given the Commission's clear warnings that it would not tolerate illicit drug trafficking by its licensees, it must be concluded that Richard Richards does not possess the requisite qualifications to be a Commission licensee. Consequently,

Richard Richards' application for renewal of license to operate  
low power station K33CG, Sierra Vista, Arizona, should be denied.

Respectfully submitted,  
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April 26, 1994



**CERTIFICATE OF SERVICE**

Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certifies that she has on this 26th day of April 1994, sent by regular United States mail, U.S. Government frank, copies of the foregoing **"Mass Media Bureau's Proposed Findings of Fact and Conclusions of Law"** to:

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